

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Auberson *et al.*
Title: 3H-PHENOXAZINE DERIVATIVES SUITABLE AS NEAR-
INFRARED IMAGING AGENTS, PREPARATION AND USE
THEREOF
Appl. No.: 10/568,841
Filing Date: 09/13/2006
Examiner: Kahsay HABTE
Art Unit: 1624
Confirmation Number: 4681

**RESPONSE TO RESTRICTION AND
ELECTION OF SPECIES REQUIREMENTS**

Mail Stop AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the restriction requirement set forth in the Office Action mailed December 15, 2008, Applicants hereby provisionally elect for further prosecution Group I, Claims 1-5 and 10-12 (in part), which are drawn to phenoxazine derivatives of Formula I.

This election is made without prejudice to or disclaimer of the other claims or inventions disclosed. Applicants reserve the right to file one or more divisional applications covering the subject matter of the non-elected Groups.

In response to the election of species requirement set forth in the same Office Action, Applicants also provisionally elect the single disclosed species of Example 3, at page 13 of the specification as originally filed: (4,8-Dimethyl-3,8,9,10-tetrahydro-2H-1,6,11-trioxa-8,13-

diaza-4-azonia-pentacen tetrafluoroborate). Claims 1-5, and 10-12 read upon the elected species.

This election is made with traverse.

Applicants believe that the present application is now in condition for allowance and respectfully request favorable consideration of the application. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extension fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 6/12/09

By P.D. Strain

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